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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,370

09/25/2003

Laurence E. Dahners

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EXAMINER

BOLES, SAMEH RAAFAT

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

03/09/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/672,370	DAHNER, LAURENCE E.	
	Examiner	Art Unit	
	SAMEH BOLES	3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,21-26 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,21-26 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/5/08,8/2/06,3/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

According to the Amendment filed on February 9, 2011, claim 38 is amended, claims 3, 7-20, 27-36 are cancelled and claims 1-2, 4-6, 21-26, 37-40 are pending and examined in this office action.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ender (US Patent 4,467,793).

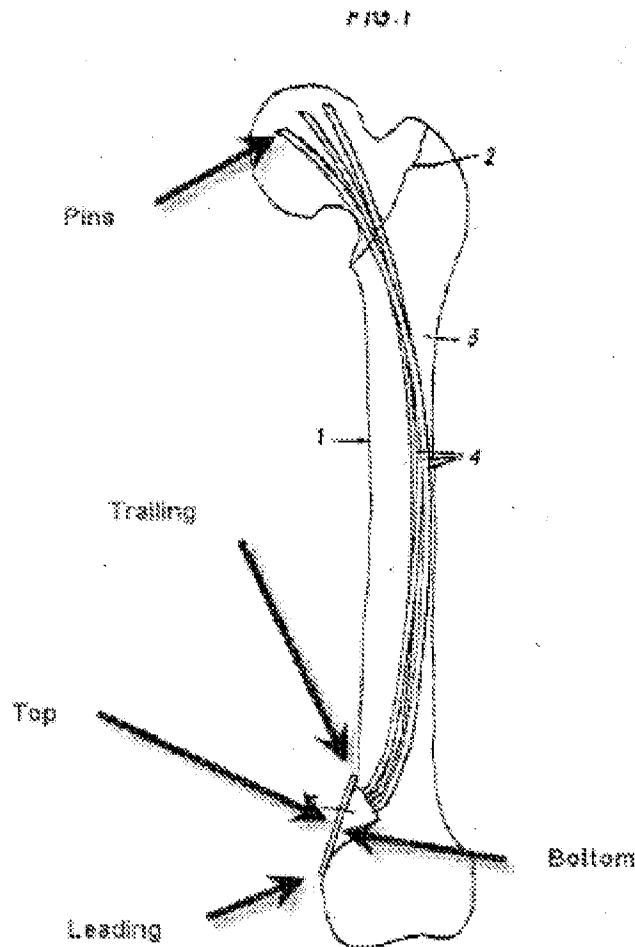
Ender discloses an intrafocal plate (Fig. 1) for securing bone fractures comprising: an elongate plate (5) element defining a leading ending (see modified fig. 1 below), a trailing end (see modified fig. 1 below), an intermediate location between the leading and trailing ends, an overhanging heel (17, see Fig. 7) toward the trailing end configured to prevent over reduction of a fracture and to stabilize the intrafocal plate when inserted into a fracture site of a bone, a top surface (7), and a bottom surface that is configured to engage an outer surface of a bone; and a resilient body element (4) (col. 1, lines 19-20) extending downwardly from the bottom surface of the elongate plate element and in a lengthwise direction relative to the elongate plate element beyond the terminal end of the resilient plate element (Fig. 1), the resilient body extending from the intermediate location (see modified fig. 1 below) of the elongate plate element such that

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the overhanging heel of the elongate plate element is located between the resilient body element (4) and the trailing end of the elongate plate element (see modified fig. 1 below).

Ender fails to teach that the resilient body element formed as an integral, single piece with the elongate plate element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the resilient body element formed as an integral, single piece with the elongate plate element, since it has been held that forming various elements in one piece involves only routine skill in the art. *Howard v, Detroit Stove Works*, 150 U.S. 164 (1893).



3. Claims 1, 2, 4-6, 21-26, 37 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ender (US Patent 4,467,793) in view of Medoff (US. Pat. No. 5709682).

Ender discloses a longitudinally extending plate (5, Fig. 1) made of resilient material consisting of a flat, elongated plate element (7, Fig. 2) having a surface at one end having a top (7) and bottom and leading and trailing end that is sized to overlay a fracture site, and further has a longitudinally extending body element (4) integral with the plate element and is further considered adjacent but spaced apart from the trailing

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end of the surface of the plate element and has apertures (6). The overhanging heel portion (17) is adjacent to the trailing end and extends downwardly above the location at which the resilient body element is integral to the surface of the plate element. The heel serves to assist stabilize the fracture site. It is capable of preventing over-reduction. The intrafocal plate also has a resilient body element (4, col. 1, lines 19-20) which extends down and outward from the bottom of the surface (see modified Fig. 1 above) and further has a pin element (see modified Fig. 1 above). The body element connects at a location that is between the leading end and trailing end. The intrafocal plate further has a shoulder at the juncture of the body element and surface and further defines an acute angle (adjacent to the trailing end portion in the drawing above). The plate including a screw for insertion through an aperture (9, Fig. 2 and 3) defined in the surface of the plate element (col. 5, lines 25-29).

Ender fails to teach that the body element has a sinuous shape in a first plane according to a side elevation view of the body element, wherein the sinuous shape extending downwardly and outwardly from the bottom surface of the elongate plate element in the first plane, wherein the body element has a first portion, a second portion a third portion and a fourth portion, wherein the first portion curves away from the plate element, the second portion curves toward the plate element, the third portion curves away from the plate element and the fourth portion curves toward the plate element; and the body element defining a straight shape according to a top elevation view of the body element.

Medoff teaches a body element (Fig. 3) has a sinuous shape in a first plane according to a side elevation view (Fig. 3) of the body element, wherein the sinuous shape extending downwardly and outwardly in the first plane (Fig. 3), wherein the body element has a first portion, a second portion a third portion and a fourth portion for fixation of one or more bone fragments (abstract; see Fig. 5), wherein the first portion curves away from the first part (41, may be considered as a plate element) (see modified Fig. 5 below), the second portion curves toward the plate element (see modified Fig. 5 below), the third portion curves away from the plate element (see modified Fig. 5 below) and the fourth portion curves toward the plate element (see modified Fig. 5 below); and the body element defining a straight shape according to a top elevation view (Fig. 2) of the body element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the resilient body element of Ender from a sinuous shape from first, second, third and fourth curved portions extending downwardly and outwardly from the bottom surface of the plate in view of Medoff for enhancing fixation of one or more bone fragments.

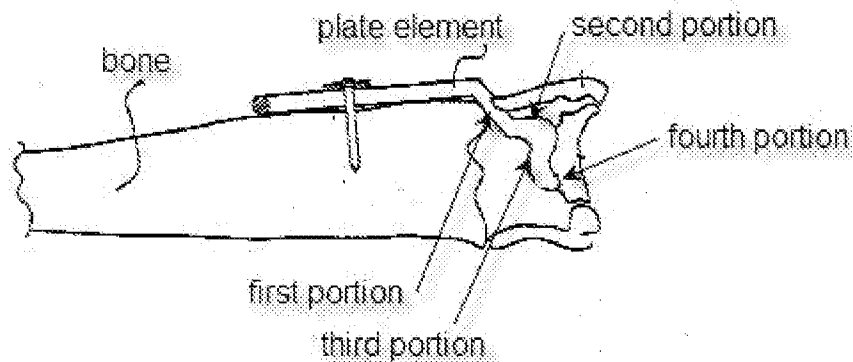


Fig. 5

Response to Arguments

Applicant's arguments filed with respect to claims 1, 5-6 and 21 have been fully considered but they are not persuasive.

Applicant further argues that there would be no reason to modify the structure of Ender with that of Medoff. In particular, the bent shape shown in Medoff would likely be difficult, if not impossible, to drive through the guiding channel of Ender, much less driven into the bone without breaking it.

Examiner respectfully disagrees, since the bent shape shown in Medoff is flexible to slide through bone (col. 8, lines 58-60), and it would be likely easy and possible to drive it through the guiding channel of Ender into bone without breaking it.

Applicant further argues that Medoff does not disclose, teach, or suggest that a resilient body element formed as an integral, single piece with an elongate plate

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element that defines a leading ending, a trailing end, an overhanging heel toward the trailing end, and a bottom surface with the resilient body element extending downwardly from the bottom surface of the intermediate location of the elongate plate element and in a lengthwise direction relative to the elongate plate element beyond a terminal end of the elongate plate element as recited in claim 38.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments with respect to claim 38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMEH BOLES whose telephone number is (571)270-5537. The examiner can normally be reached on Monday - Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/

Examiner, Art Unit 3775

/EDUARDO C. ROBERT/

Supervisory Patent Examiner, Art Unit 3733